(2)

No. 99-1813

Supreme Court, U.S.
FILED
JUN 12 2000
CLERK

In The

Supreme Court of the United States

MATT T. KOKKONEN,

Petitioner,

v.

CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; GUARDIAN INSURANCE AND ANNUITY CORPORATION; and GUARDIAN INVESTOR SERVICES CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California Second Appellate District, Division Six

BRIEF IN OPPOSITION OF RESPONDENTS GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, GUARDIAN INSURANCE AND ANNUITY CORPORATION, GUARDIAN INVESTOR SERVICES CORPORATION, DENNIS P. D'AUTREMONT, MICHAEL ABLES, HAVEN B. SANSON, AND MARTIN G. HATLEY

ROBERT A. DOLINKO
Counsel of Record
ROBERT SPAGAT
THELEN REID & PRIEST
101 Second Street, Suite 1800
San Francisco, California 94105
Telephone (805) 369-1200
Facsimile (415) 369-1211
Counsel for Respondents Guardian Life Insurance Company of America, Guardian Insurance and Annuity Corporation, Guardian Investor Services Corporation, Dennis P. D'Autremont, Michael Ables, Haven B. Sanson, and Martin G. Hatley

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

GUARDIAN LIFE INSURANCE COMPANY OF AMERICA ("GLIC") is a New York Mutual Insurance Company. GLIC has no parent companies, and there are no publicly held companies who own more than ten percent of its stock.

GUARDIAN INVESTMENT AND ANNUITY CORPORATION ("GIAC"), a Delaware Corporation, is a wholly owned subsidiary of GLIC. GUARDIAN INVESTOR SERVICES CORPORATION ("GISC"), a New York Corporation, is a wholly owned subsidiary of GIAC.

The remaining appearing respondents, DENNIS P. D'AUTREMONT, MICHAEL ABLES, MARTIN G. HATLEY and HAVEN B. SANSON, are natural persons.

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether the Petitioner's due process rights were violated by his supposed inability to review portions of Respondents' motion for summary judgment that had been marked "Confidential – Attorneys' Eyes Only." The Petition should be dismissed for three simple reasons.

First, the question is not properly presented. Contrary to Petitioner's contention, the only portion of Respondents' summary judgment motion labeled "attorneys' eyes only" was Petitioner's own deposition testimony. *Thus, Petitioner was not prevented from seeing any part of the motion.*

Second, this Court is without jurisdiction to entertain the Petition because Petitioner waived the issue (several times). He first waived it when he stipulated to the terms of the protective order – which his own attorneys drafted. He again waived it when he further stipulated to the designation of evidence as "attorneys' eyes only" because, under the plain terms of the protective order, the "attorneys' eyes only" designation could not be made by any one party unilaterally. Finally, Petitioner waived the issue because he failed to challenge the material in the summary judgment motion supposedly designated "attorneys' eyes only" through the procedure set forth in the protective order for this purpose. Indeed, despite contrary suggestions in the Petition which are unsupported by any citations to the record, the issue was never properly raised in the trial court.

Third, even if the question presented by the Petition was properly before this Court, it would not meet the

criteria for review under Rule 10 of the Supreme Court Rules. In an unpublished decision, the California Court of Appeal simply ruled that Petitioner had waived his right to pursue this issue by not raising it in the trial court. That determination of a procedural issue under state law does not conflict with any decision of any state court of last resort or any United States Court of Appeals, nor does it raise an important issue of federal law.

I.

THE RECORD BELOW DOES NOT RAISE THE QUESTION PRESENTED BY THE PETITION

Notwithstanding the Petition's unsupported suggestions to the contrary, petitioner was not actually denied the opportunity to see *any* of the papers filed in support of the motion for summary judgment. Paragraph 1 of the protective order provided that any party could in good faith designate evidence "Confidential." (Appendix ("App.") 2.) Paragraphs 2 and 3 provided that the "Confidential" designation did not prevent any party from viewing the evidence; it simply prevented the parties from disclosing the evidence "except in the preparation and trial of the action." (App. 2-3.) By contrast, Paragraph 4 provided that the parties could only designate evidence "attorneys' eyes only" by mutual agreement, or in the absence of such agreement, by court order. (App. 3) The protective order further provided that filing exhibits which incorporated confidential documents under seal did not change the designation of the filings to "attorneys' eyes only." Rather, Paragraph 5 explicitly provided that a party filing such documents "may designate such material . . . for filing under seal and all copies thereof

shall be kept in confidence by the other parties *as provided in Paragraphs 2, 3, 4 (if applicable) and 7 hereof.*" (App. 3-4; emphasis added.)

Each of the pleadings supporting Respondents' motion for summary judgment was filed "Confidential – Filed under Seal."[1] (App. 9, 11, 19, 21, 23, 25, 27, 28, 30, 57, 59, 61, 63, 65.) The Appendix of Exhibits and Supplemental Exhibit Package filed in support of the motion for summary judgment ("MSJ") included the following exhibits: (1) pleadings from the action (filed for the convenience of the court) (MSJ Exhs. 1-5); (2) pleadings and the trial transcript from a prior lawsuit between the parties offered in support of Respondents' successful contention that most of the Petitioner's claims were barred by the doctrine of *res judicata* (MSJ Exhs. 6-9, 22-24); (3) two letters that Petitioner attached to the complaint and produced in discovery without designating "confidential" or "attorneys' eyes only" (MSJ Exhs. 10-11, 25-26); (4) excerpts from Petitioner's deposition, his written discovery responses and documents he produced in discovery (MSJ Exhs. 12-16 and 21); and (5) excerpts from the depositions of Respondents Hatley, Sanson, Hagmaier,

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[1] All Respondents joined in a motion for summary judgment, which the Superior Court granted and the Court of Appeal affirmed. In addition, individual Respondents Ables, Hatley and Sanson filed a separate motion for summary adjudication of issues based on alternative grounds available only to them. The Superior Court granted this motion as well, although it was effectively mooted by the grant of summary judgment as to all Respondents. Nonetheless, the separate motion of individual Respondents Ables, Hatley and Sanson did not rely on any materials designated attorneys' eyes only. (App. 68, 74, 76, 78, 80, 82, 84.)

d'Autremont and Ables (MSJ Exhs. 18-20, 27-28.) (App. 34-37.) None of the proffered evidence, including the deposition testimony, was designated attorneys' eyes only, and only two pages of the Ables testimony was declared "confidential." (App. 34-56.) To the contrary, the record shows that *Petitioner was present for nearly all of the Hatley, d'Autremont, Hagmaier, and Ables depositions.* (App. 39, 48, 53, 96, 110.)

The plain terms of the protective order and the incontrovertible evidence of record establish that Petitioner was not prevented from viewing *any* of the documents filed in support of the summary judgment motions. Accordingly, this case does not raise the question presented by Petition. It should therefore be denied.

II.

THIS COURT IS WITHOUT JURISDICTION TO GRANT *CERTIORARI* BECAUSE PETITIONER WAIVED THE ISSUE IN THE TRIAL COURT

This court is without jurisdiction to grant the Petition because Petitioner waived the right to challenge the protective order.

It is well established that a litigant must follow state procedures for raising federal questions. *In re Lamkin*, 355 U.S. 59, 78 S.Ct. 137, 2 L.Ed.2d 107 (1957). As this Court has held: "A state procedural rule which forbids the raising of federal questions at late stages in the case, or by any other than a prescribed method, has been recognized as a valid exercise of state power." *Williams v. Georgia*, 349 U.S. 375, 382-83, 75 S.Ct. 814, 99 L.Ed. 1161 (1955). Accordingly, this Court has long held that it is

without jurisdiction to decide a federal question where reasonable state procedural requirements governing the raising of the issue have not been followed. *Pennsylvania R. Co. v. Illinois Brick Co.*, 297 U.S. 447, 462-63, 56 S.Ct. 556, 80 L.Ed. 796 (1936).

Petitioner waived his right to bring this issue under California state law several times over. In the first place, Petitioner's counsel stipulated to – and drafted – the protective order. (App. 1, 6.) *Estate of Butler*, 205 Cal.App.3d 311, 316, 252 Cal.Rptr. 210 (1988) (stipulation on an issue waives the right to challenge it on appeal); *c.f. Shain v. Peterson*, 99 Cal. 486, 487, 33 P. 1085 (1893) (acquiescence to order without objection waives the right to challenge it on appeal).

Moreover, as noted above, the protective order did not authorize any party to unilaterally designate evidence "attorneys' eyes only." (App. 3.) That designation could only be made by the further joint stipulation of all counsel or upon order of the discovery commissioner in each instance. (*Id.*) Petitioner's counsel stipulated to most of the evidence designated "attorneys' eyes only" (and none of it was ultimately used in support of the motion for summary judgment). (*See e.g.*, App. 94.) *Butler, supra; Shain, supra.*

Finally, Petitioner waived his right to challenge the designation of evidence under the protective order because he failed to raise the issue in the trial court. Under well-settled California state law, a party cannot raise issues for the first time on appeal. *Doers v. Golden Gate Bridge Etc. Dist.*, 23 Cal.3d 180, 184-85, fn. 1, 151 Cal.Rptr. 837, 588 P.2d 1261 (1979).

The protective order provided a procedure for either party to challenge a "confidential" or "attorneys' eyes only" designation (App. 5.) Indeed, Petitioner pursued this procedure on at least one occasion by filing a "motion for protective order" to declare evidence "attorneys' eyes only" when the Respondents refused to stipulate to his proposed designation. (App. 85-88.) In bringing this motion just four months before the summary judgment motion was filed, Petitioner's own attorney unambiguously declared his familiarity with the procedure contained in the protective order under penalty of perjury:

> Defendants have already taken advantage of the ability to designate information "attorneys' eyes only." Despite serious reservations about the proprietary nature of a seven year old business plan for Pacific Financial Group which was produced at the deposition of Dennis d'Autremont, counsel for Kokkonen allowed defendants to designate such plan as "attorneys' eyes only." Counsel did so in order to allow for the completion of the deposition and with full knowledge that it could seek to challenge that designation in the event Kokkonen's counsel concluded that it was necessary to disclose information in the business plan to Kokkonen.
>
> /s/ [Petitioner's attorney] Kirk Wolden

(App. 94.)

Petitioner's suggestion that the issue presented in the Petition was litigated in the trial court is insupportable.[2] Petitioner *never* attempted to follow the procedure set forth in the protective order to challenge Respondents' purported designation of the summary judgment papers, or any portion of them, as "attorneys' eyes only." Petitioner *never* argued to the court, as asserted in the Petition, that the "attorneys' eyes only" designation was intended to apply for pre-trial discovery purposes only, or that Respondents had to agree to de-classify designations made under the protective order for the summary judgment. (*See* Petition, at 5-6.) The *only* thing Petitioner did to "raise" the issue in the trial court was to include the following vague footnote in his opposition brief:

> The confidential nature of the documents proffered by Defendants in support of this motion, prohibit him from confronting his accusers; as such, he is denied his constitutional rights under state and federal law, and hereby objects to this motion.

(App. 107, fn. 7) Petitioner never drew the court's attention to this footnote, which was buried on page 13 of his

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[2] Contrary to the assertion in the Petition, the summary judgment motions included no excerpts from the depositions of d'Autremont, Sanson or Hatley that had been designated "attorneys' eyes only" and no excerpts whatsoever from the Mosher deposition (App. 33-37.) Petitioner's assertion that he was excluded from attending the deposition of d'Autremont, Sanson, Hagmaier and Mosher is ludicrous. The record reveals that he *attended* the Hagmaier, d'Autremont, and Mosher depositions. (App. 96, 99, 101.) He was excluded from only small portions of these depositions that did not play any role in the summary judgment motions.

opposition brief, at the summary judgment hearing. He never explained what he now claims he meant by this footnote in open court or in any other manner prior to the entry of judgment. He never raised the issue in accordance with the procedure set forth in the stipulated protective order. Thus, the California Court of Appeal properly determined that Petitioner waived the issue. (*Doers, supra;* Petitioner's Appendix A-17.) Accordingly, this Court should deny the Petition for want of jurisdiction.

III.

THE PETITION DOES NOT MEET THE CRITERIA FOR A GRANT OF *CERTIORARI*

Finally, even if the question presented by the Petition had been properly presented and not waived, it would not present compelling grounds for review within the meaning of Rule 10 of the Supreme Court Rules.

First and foremost, the issue presented in the Petition is a matter of state court procedure. It is for the California state courts, and not this Court, to decide whether the procedures employed in the trial court were proper. They have decided that the trial court did not commit reversible error.

Moreover, Petitioner has utterly failed to frame a federal issue or cite any pertinent federal authorities to show that the issue involves a conflict in the circuits or raises important federal issues. (*See* Supreme Court Rule 10.) Instead, the petition spends several pages discussing cases decided under the Economic Espionage Act, 18 U.S.C. § 1831, *et seq.* (Petition, at 18-20.) If that statute

raises important issues warranting this Court's attention, the Court should grant *certiorari* in a case arising under that statute, where the issues are fully framed on a proper record.

The *only* other case Petitioner cites in support of his contention that a constitutional issue is at stake in this case is *Lynn v. Regents of the University of California*, 656 F.2d 1337 (9th Cir. 1981). In *Lynn*, the plaintiff, a university professor, sued for sex discrimination after she was denied tenure. Plaintiff and her attorney were denied the right to view her tenure file, yet the file was submitted to the court and reviewed *in camera* during the course of a bench trial. On appeal, the Ninth Circuit found that the District Court's review and apparent reliance upon evidence withheld from the plaintiff *and her attorney* violated the plaintiff's due process rights. *Id.*, at 1345-46.

Lynn is obviously distinguishable from this case because: (1) Petitioner's attorneys were allowed to see all of the evidence in this case; (2) Petitioner never pursued the stipulated procedure for challenging an "attorneys' eyes only" designation; and (3) Petitioner was not denied the right to see any of the evidence relied upon by the trial court in granting Respondents' motion for summary judgment. It is obvious that the instant case does not create a conflict with *Lynn* or raise any important issue of federal law.

The decision in this case was a routine, unpublished decision involving a well-settled and uncontroversial

issue of state procedure. For this separate and independent reason, the Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

ROBERT A. DOLINKO
Counsel of Record
ROBERT SPAGAT
THELEN REID & PRIEST
101 Second Street, Suite 1800
San Francisco, California 94105
Telephone (805) 369-1200
Facsimile (415) 369-1211
Counsel for Respondents Guardian Life Insurance Company of America, Guardian Insurance and Annuity Corporation, Guardian Investor Services Corporation, Dennis P. D'Autremont, Michael Ables, Haven B. Sanson, and Martin G. Hatley

Dated: June 12, 2000

JENCKS & HUNT
Michael R. Jencks SBN 053822
Eric J. Parkinson SBN 166518
555 Chorro Street
San Luis Obispo, CA 93405-2399
Telephone (805) 544-1890
Facsimile (805) 544-1964

Attorneys for Plaintiff
MATT T. KOKKONEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as KOKKONEN INSURANCE AGENCY, Plaintiff, v. CARL J. HAGMAIER; DENNIS P. DÁUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, inclusive, Defendants.	CASE NO. 70630 CONFIDENTIALITY STIPULATION AND ORDER (Filed Jan. 14, 1994)

IT IS HEREBY STIPULATED among all of the parties that, with respect to all discovery requests, interrogatory answers, documents, deposition testimony and other information which a party serves, produces, supplies or obtains during any pretrial aspect of this action, the following procedures shall be employed and the following terms, conditions and restrictions shall govern where applicable in order to preserve confidential business information, as well as private client information:

1. Any party or other witness may, in good faith, designate as "confidential" any non-public documents or information that contain, refer or relate to that person's or entity's (i) trade secrets; (ii) commercially sensitive or competitively significant information; (iii) personal records or files; or (iv) personal or privileged client information as defined by Insurance Code § 791.02 subd. (a) and (v). The producing entity shall designate such material as confidential, either by placing the word "CONFIDENTIAL" on any such document or other material, or by means of such other designation as will identify the confidential information with sufficient specificity to permit counsel herein to adhere to the provisions of this Confidentiality Stipulation and Order with respect thereto.

2. Except as may be otherwise authorized by subsequent order of this Court, non-public documents or information obtained by discovery and designated CONFIDENTIAL shall not be disclosed by the parties to these proceedings other than for the preparation and trial of this action.

3. Counsel for the parties shall not disclose non-public documents or information obtained by discovery and designated CONFIDENTIAL except in the preparation and trial of this action. Any person to whom such disclosure is made shall be advised of, and become subject to, the provisions herein requiring that such non-public documents or information be held in confidence. This paragraph shall not, however, preclude showing any document or the disclosure of any non-public information to a third party witness during deposition or trial, provided such witness is not given a copy of any such non-public document to take from the place of said deposition or trial and provided further that said witness and the reporter thereof are advised of and agree to be covered by the provisions of the Confidentiality Stipulation and Order.

4. If, and only if, counsel for the parties mutually agree, certain confidential documents or information may be further designated by a party as "ATTORNEYS EYES ONLY," in which case, counsel for the parties shall not disclose such information to others, except to persons retained by counsel or employed by a party to assist counsel in the preparation and trial of this action. If the parties cannot agree in this regard, any party may seek any appropriate relief, including a protective order, from the Court in order to procure such additional protection.

5. To the extent that any transcripts of depositions, exhibits, answers to interrogatories or other papers to be filed with the court incorporate any non-public documents or information obtained by discovery which any party wishes or is obligated to have kept in confidence, such party may designate such material or portions

thereof for filing under seal and all copies thereof shall be kept in confidence by the other parties as provided in Paragraphs 2, 3, 4 (if applicable) and 7 hereof.

6. If, during trial or in connection with any motion or other proceeding, any party intends to offer into evidence any non-public documents or information obtained by discovery, that party shall so inform the entity which produced such document or information a reasonable time in advance in order that the producing entity may take such steps as are deemed reasonably necessary to preserve the confidentiality of such document or information if not otherwise provided for herein.

7. Upon final termination of this action, including all appeals, at the request of any entity having produced materials which remain designated as confidential, all other parties shall return to the requesting entity all non-public documents produced by that entity, including any copies, extracts or summaries thereof or documents containing information taken therefrom, but excluding any materials which in the judgment of counsel are work product materials. Upon express direction by the Court after final termination of this action, counsel shall take such steps as the requesting entity may reasonably request to insure the continued non-disclosure of information contained in work product materials.

8. With respect to third party witnesses, each such witness to when any party discloses at deposition or trial non-public documents or information obtained by discovery is to be bound by the provisions hereof requiring that said non-public documents and information be held in confidence. Any subpoena or subpoena duces tecum to

any third party witness, or any other arrangement to obtain the presence of a third party witness for a deposition or trial, shall be accompanied by a copy hereof, or an appropriate order issued hereon, together with notification that said third party witness is to be covered by the terms thereof, unless otherwise ordered by the Court or unless otherwise stipulated in writing by the entity producing the non-public documents or information.

9. The Confidentiality Stipulation and Order as entered without prejudice to the right of any party to waive the applicability of this Stipulation and Order as to any information produced by that party. Upon application to the Court, any party or other producing entity may seek additional protective treatment for, or object to the disclosure, production, or introduction into evidence of, any information or documents which might become the subject of discovery; object to the designation of any document as confidential; or seek any modification of or relief from this Stipulation and Order; whereupon opposing counsel shall have the normal period in which to respond. Prior to any such application, counsel shall confer in a good faith effort to obtain agreement without resort to the Court.

10. The failure to promptly object to a designation of confidentiality shall not prejudice a party's subsequent right to challenge such designation.

11. Any pleading, transcript, memorandum or other paper containing, summarizing, excerpting or otherwise embodying any confidential information that is filed with the Court shall be filed under seal and shall remain scaled while in the office of the Clerk of this Court.

12. The terms of this Confidentiality Stipulation and Order shall survive and remain in full force and effect after the termination of this lawsuit.

IT IS SO STIPULATED:

Dated: ~~December~~ January 13, 1993~~4~~. RAD

EPSTEIN, BECKER & GREEN
Robert A. Dolinko, Esq.
Michael Horan, Esq.
Two Embarcadero Center, Suite 1650
San Francisco, CA 94111-5994

By /s/ Robert A. Dolinko
Robert A. Dolinko, Esq.
Attorneys for Defendants Carl J. Hagmaier; Dennis P. dÁutremont; Haven B. Sanson; Martin G. Hatley; Michael Ables; Pacific Financial Group; the Guardian Life Insurance Company of America; the Guardian Insurance and Annuity Corporation; and the Guardian Investor Services Corporation

Dated: ~~December~~ January 11 1993~~4~~.

JENCKS & HUNT
Michael R. Jencks, Esq.
555 Chorro Street
San Luis Obispo, CA 93405-2386

By /s/ Michael R. Jencks
Michael R. Jencks, Esq.
Attorneys for Plaintiff Matt T. Kokkonen, C.L.U. individually and doing business as Kokkonen Insurance Agency

IT IS SO ORDERED:

Dated: 1/14/94

/s/ Illegible
Judge of the Superior Court
County of San Luis Obispo

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SCHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA,
THE GUARDIAN INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **DEFENDANTS THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE**

) AND ANNUITY
) CORPORATION,
) THE GUARDIAN
) INVESTOR
) SERVICES
) CORPORATION
) AND
) DENNIS P.
) D'AUTREMONT'S
) NOTICE OF
) MOTION AND
) MOTION FOR
) SUMMARY
) JUDGMENT

Date: Aug. 23, 1996

Time: 9:00 a.m.

Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Jul. 26, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SCHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA,
THE GUARDIAN INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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) SUMMARY
) JUDGMENT

Date: Aug. 23, 1996

Time: 9:00 a.m.

Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SCHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA,
THE GUARDIAN INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **DEFENDANTS THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE**

) AND ANNUITY
) CORPORATION,
) THE GUARDIAN
) INVESTOR
) SERVICES
) CORPORATION
) AND
) DENNIS P.
) D'AUTREMONT'S
) NOTICE OF
) MOTION AND
) MOTION FOR
) SUMMARY
) JUDGMENT

Date: Aug. 23, 1996

Time: 9:00 a.m.

Place: CLM

To Plaintiff MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, and his attorney of record:

NOTICE IS HEREBY GIVEN that on August 23, 1995 at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department CLM of the above-identified court, defendants DENNIS P. D'AUTREMONT, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION ("Defendants") will move, and hereby do move, pursuant to Rule 437c of the California Code of Civil Procedure, for summary judgment against Plaintiff

Matt T. Kokkonen, and in favor of Defendants, on all claims in plaintiff's complaint on file in this action.

This motion is made on the following grounds: (1) there are no disputed issues of material fact; and (2) Defendants are entitled to judgment in their favor as a matter of law. Defendants are entitled to judgment as a matter of law because:

As to the First Cause of Action for Libel, the allegedly libelous statement are true, and the communication were protected by the common interest privilege;

As to the Third Cause of Action for Trade Libel, there is no evidence to support a claim for trade libel, as distinct from a claim for libel;

As to the Fifth Cause of Action for Interference with Economic Advantage, the cause of action is barred by the doctrine of *res judicata;*

As to the Sixth Cause of Action for "Unfair Competition and Business Practices," there is no evidence of a conspiracy, any adverse impact on competition, locality discrimination, sales below cost, loss leader sales or secret rebates; plaintiff's request for an injunction is untimely; and the allegedly false advertising is true;

As to Seventh Cause of Action for Violation of Insurance Code section 790.03, there is no private right of action for alleged violations of this statute;

As to the Eight and Ninth Causes of Action for Breach of Settlement Agreement and Rescission, there have been no breaches of the agreement and there are no grounds for rescission given the terms of the settlement agreement, as set forth in proceedings on the record

before Judge Robert E. Coyle of the United States District Court for the Eastern District of California in *Kokkonen v. The Guardian Life Insurance Company of America, et al.*, Case No. CVF 90 325 REC; and

As to the Tenth Cause of Action for injunction, there is no cause of action for injunction; injunctions are merely a form of relief.

The motion is based upon this notice of motion and motion, the memorandum of points and authorities, the separate statement of undisputed material facts and supporting evidence, the declarations of Carl J. Hagmaier, Tim Lavey, and Robert A Dolinko, the Request for Judicial Notice, the Package of Exhibits, the Appendix of Non-California Authority cited in defendants' motions, the files and record herein, and such other and further evidence and arguments as may be presented.

Dated: July 25, 1996

THELEN, MARRIN, JOHNSON & BRIDGES
By /s/ Robert Spagat
Robert A. Dolinko
Marta R. Pierpoint
Robert Spagat
Attorneys for Defendants DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

Dated:

SINSHEIMER, SCHIEBELHUT & BAGGETT

By /s/ Roy E. Ogden
Roy E. Ogden
Attorneys for Defendants DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, the GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES

PROOF OF SERVICE BY HAND-DELIVERY

I am a citizen of the United States and am employed in the City and County of San Luis Obispo; I am over the age of 18 years and am not a party to the action entitled on the document to which this certificate is attached; my business address is Sinsheimer, Schiebelhut & Baggett, 1010 Peach Street, Post Office Box 31, San Luis Obispo, California 93406. I am employed by an attorney permitted to practice before this Court.

I served the foregoing "**Defendants the Guardian Life Insurance Company of America, the Guardian Insurance and Annuity Corporation, the Guardian Investor Services Corporation and Dennis P. D'Autremont's Notice of Motion and Motion for Summary Judgment**" on the parties named below by personally delivering a true copy of said document by hand on July 26, 1996, by 5:00 p.m.:

Kirk Wolden, Esq.
Jencks, Bonitz & Vella
The Promontory
415 Higuera Street
San Luis Obispo, CA 93401

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Luis Obispo, California, on July 26, 1996.

/s/ Lynn Parmann
LYNN PARMANN

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SCHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA,
THE GUARDIAN INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' GUARDIAN LIFE INSURANCE**

) COMPANY OF
) AMERICA, AND
) DENNIS P.
) D'AUTREMONT'S
) MOTIONS FOR
) SUMMARY
) JUDGMENT, AND
) IN THE
) ALTERNATIVE,
) SUMMARY
) ADJUDICATION

Date: Aug. 23, 1996

Time: 9:00 a.m.

Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Jul. 26, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

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MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
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A Professional Corporation
Post Office Box 31
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Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
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THE GUARDIAN LIFE INSURANCE COMPANY
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THE GUARDIAN INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS' THE GUARDIAN LIFE INSURANCE**

) COMPANY OF
) AMERICA, THE
) GUARDIAN
) INSURANCE
) AND ANNUITY
) CORPORATION,
) THE GUARDIAN
) INVESTOR
) SERVICES
) CORPORATION
) AND DENNIS P.
) D'AUTREMONT'S
) MOTION FOR
) SUMMARY
) JUDGMENT

Date: Aug. 23, 1995

Time: 9:00 a.m.

Place: CLM

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A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
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THE GUARDIAN LIFE INSURANCE COMPANY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT OR**

) **IN THE**
) **ALTERNATIVE,**
) **SUMMARY**
) **ADJUDICATION**

Date: Aug. 23, 1996

Time: 9:00 a.m.

Place: CLM

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SINSHEIMER, SCHIEBELHUT & BAGGETT
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Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA,
THE GUARDIAN LIFE INSURANCE AND
ANNUITY CORPORATION, and
THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. and related cross-action.	Case No.: 70630 DECLARATION OF TIM LAVEY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Date: August 23, 1996 Time: 9:00 a.m. Place: CLM

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(Filed Jul. 26, 1996)

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San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SCHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
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THE GUARDIAN INSURANCE AND
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants.	Case No.: 70630 **DECLARATION OF ROBERT A. DOLINKO IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE,**

) **SUMMARY**
) **ADJUDICATION**
)

Date: Aug. 23, 1995

Time: 9:00 a.m.

Place: CLM

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(Filed Jul. 26, 1996)

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HANSON, RIDGETT, MARCUS, VLAHOS & RUDY, LLP
JAMES A. NAPOLI – 131968
333 Market Street, Suite 2300
San Francisco, California 94105-2173
(415) 777-3200

Attorneys for Defendants
Carl J. Hagmaier and Pacific
Financial Group

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

Matt T. Kokkonen, C.L.U., individually and doing business as The Matt Kokkonen Insurance Agency, Plaintiff, vs. Carl J. Hagmaier, et al., Defendant. And Related Cross-Actions	No.: 70630 **DECLARATION OF CARLTON J. HAGMAIER IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND IN the ALTERNATIVE SUMMARY ADJUDICATION** Date: Aug. 23, 1996 Time: 9:00 a.m. Dept: CLM

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Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON,
MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. AND RELATED CROSS-ACTION.	Case No.: 70630 **DEFENDANT'S EXHIBIT PACKAGE** Date: Aug. 23, 1996 Time: 9:00 a.m. Dept: CLM

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A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
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MARTIN G. HATLEY, MICHAEL ABLES,
THE GUARDIAN LIFE INSURANCE COMPANY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR the COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. AND RELATED CROSS-ACTION.	Case No.: 70630 **DEFENDANT'S EXHIBIT PACKAGE** Date: Aug. 23, 1996 Time: 9:00 a.m. Dept: CLM

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. and related cross action.	Case No.: 70630 **DEFENDANTS' EXHIBIT PACKAGE** Date: Aug. 23, 1996 Time: 9:00 a.m. Dept: CLM

EXHIBITS

EXHIBIT	DESCRIPTION	AUTHENTICATION
	Pleadings in this Action (For Convenience of Court)	
Exhibit 1	First Amended Complaint	
Exhibit 2	Plaintiff Matt T. Kokkonen's Memorandum of Points and Authorities in Opposition to Defendants' Motion For Judgment On the Pleadings Re: Plaintiff's First Amended Complaint	
Exhibit 3	Order on Motion for Judgment on the Pleadings	

Exhibit 4	Declaration of Michael R. Jencks in Support of Kokkonen's Opposition to Defendants' Motion to Dismiss for Failure of Prosecution	
Exhibit 5	Exhibits to Declaration of Michael R. Jencks in Support of Kokkonen's Opposition to Defendants' Motion to Dismiss for Failure of Prosecution	
	Pleadings in Kokkonen I – Request for Judicial Notice	
Exhibit 6	Kokkonen I Stipulation and Order Regarding Undisputed Facts	Request For Judicial Notice, ¶ 1
Exhibit 7	Transcript Proceedings in Kokkonen I, March 3-4	Request for Judicial Notice, ¶ 2
Exhibit 8	Transcript Proceedings in Kokkonen I, Thursday March 5, 1992	Request For Judicial Notice, ¶ 3
Exhibit 9	Kokkonen I Order Enforcing Settlement Agreement	Request For Judicial Notice, ¶ 4
	Exhibits to Hagmaier Declaration	
Exhibit 10	September 26, 1990, Letter to Harold K. Mosher from Carl J. Hagmaier and Dennis P. d'Autremont, with attachments	Hagmaier decl., ¶ 1

Exhibit 11	April 12, 1991, Letter to Hal Mosher from Carl J. Hagmaier, with attachments	Hagmaier Decl., ¶ 2
	Exhibits to Dolinko Declaration	
Exhibit 12	Excerpts from Plaintiff's Deposition	Dolinko decl., ¶ 4
Exhibit 13	Plaintiff's Supplemental Response to the First Set of Special Interrogatories Propounded by the Guardian Life Insurance Company of America	Dolinko Decl., ¶ 6
Exhibit 14	Plaintiff Matt T. Kokkonen's Further Supplemental Responses to the First set of Special Interrogatories Propounded by The Guardian Life Insurance Company of America	Dolinko Decl., ¶ 7
Exhibit 15	Response of Matt T. Kokkonen to the First Set of Interrogatories Propounded by The Guardian Insurance and Annuity Corporation	Dolinko Decl., ¶ 8
Exhibit 16	Letters Produced by Plaintiff in Support of Claim for Violation of Bus. and Prof. Code Section 17500 (Misleading Advertising)	Dolinko Decl., ¶ 9

Exhibit 17	Plaintiff's Response to First Set of Requests for Admissions from Defendant Guardian Life Insurance Company of America	Dolinko Decl., ¶ 10
Exhibit 18	Excerpts from Defendant Hatley's Deposition	Dolinko Decl., ¶ 11
Exhibit 19	Excerpts from Defendant Sanson's Deposition	Dolinko Decl., ¶ 12
Exhibit 20	Excerpts from Defendant d'Autremont's Deposition	Dolinko Decl., ¶ 13
Exhibit 21	Response of Matt T. Kokkonen to The Third Set of Interrogatories by Defendants Carl J. Hagmaier, Dennis P. d'Autremont, Michael Ables, Martin G. Hatley and Haven Sanson and attached selected letters	Dolinko Decl., ¶ 14
	Pleadings in Kokkonen I – Midnight Addition Request For Judicial Notice	
Exhibit 22	First Amended Complaint, Kokkonen I	Request For Judicial Notice, ¶ 5

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., ETC.,	)	
PLAINTIFF,	)	
VS.	)	No. 70630
CARL J. HAGMAIER, ET AL.,	)	
DEFENDANTS.	)	
AND RELATED CROSS-ACTION	)	

DEPOSITION OF MARTIN G. HATLEY

SAN LUIS OBISPO
CALIFORNIA

THURSDAY, MARCH 28, 1996

9:34 A.M.

[2] THE DEPOSITION OF MARTIN G. HATLEY

WAS TAKEN IN THE LAW OFFICES OF JENCKS, BONITZ & VELLA, 412 HIGUERA STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CSR, A REGISTERED PROFESSIONAL REPORTER, ON THURSDAY, MARCH 28, 1996, COMMENCING AT THE HOUR OF 9:34 A.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF: JENCKS, BONITZ & VELLA
ATTORNEYS AT LAW
412 HIGUERA STREET
SAN LUIS OBISPO,
CALIFORNIA 93401

BY: MR. KIRK J. WOLDEN

FOR THE DEFENDANTS:	THELEN, MARRIN, JOHNSON & BRIDGES ATTORNEYS AT LAW TWO EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111 BY: MR. ROBERT A. DOLINKO
ALSO PRESENT:	MATT KOKKONEN
REPORTED BY:	LYNN ODOM, CSR #1905
TRANSCRIBED BY:	COLLEEN K. LEA

* * *

[34] Q AND DID YOU RECEIVE A FORMAL OFFER OF EMPLOYMENT AS A FIELD REPRESENTATIVE FROM THE GUARDIAN?

A I AM NOT CERTAIN ABOUT "FORMAL OFFER," BUT –

Q I AM REFERRING TO ONE IN WRITING.

A I WAS PRESENTED WITH AN F.R. CONTRACT BY MATT, YES.

Q DO YOU STILL HAVE A COPY OF YOUR ORIGINAL FIELD REPRESENTATIVE'S CONTRACT?

A NO, I DO NOT.

Q DO YOU RECALL WHETHER YOUR FIELD REPRESENTATIVE'S CONTRACT HAD AN ANNUAL PRODUCTION REQUIREMENT?

A I DON'T RECALL.

Q DO YOU RECALL EVER HAVING AN ANNUAL PRODUCTION REQUIREMENT WHILE BEING EMPLOYED BY THE GUARDIAN?

A I DON'T RECALL WHETHER IT WAS AN ANNUAL REQUIREMENT. THERE WAS A PRODUCTION REQUIREMENT OF SOME TYPE IN ORDER TO CONTINUE DRAWING A PAYCHECK.

Q AND AS EARLY AS YOU CAN RECALL IN THE PERIOD YOU WERE EMPLOYED BY THE GUARDIAN, WHAT WAS THAT MINIMUM PRODUCTION REQUIREMENT?

A I DON'T RECALL WHAT THE REQUIREMENT WAS.

Q WHEN DID YOU TERMINATE YOUR EMPLOYMENT WITH [35] THE GUARDIAN?

A I BELIEVE MY RESIGNATION WAS IN JANUARY OF 1991.

Q SO FROM YOUR LAST RESPONSE, I CAN ASSUME THAT YOU LEFT VOLUNTARILY?

A YES.

Q DID YOU SEND IN A FORMAL LETTER OF RESIGNATION?

A YES, I DID.

Q DO YOU HAVE A COPY OF THAT?

A NO, I DO NOT.

Q CAN YOU DESCRIBE FOR ME BRIEFLY WHY YOU DECIDED TO LEAVE THE GUARDIAN?

A MY DECISION WAS BASED UPON THE DISLIKE FOR A COMMISSION-BASED INCOME AND THE FLUCTUATIONS IN THIS INCOME.

Q WAS IT IN PART DUE TO ANY DISLIKE OR DIFFICULTIES YOU WERE HAVING WITH ANY AGENT OF PACIFIC FINANCIAL GROUP OR THE SAN LUIS OBISPO GENERAL AGENCY?

A I LEFT BECAUSE I DID NOT LIKE A COMMISSION-BASED INCOME. I HAD NO DIFFICULTIES WITH THE AGENTS OR ANY REPRESENTATIVES IN THE PACIFIC FINANCIAL GROUP.

Q OKAY. THAT WOULD INCLUDE MR. HAGMAIER AND MR. D'AUTREMONT?

A THAT WOULD INCLUDE BOTH OF THEM, YES.

[36] Q SO AFTER THIS TWO MONTHS THAT YOU WERE A BROKER, THEN YOU BECAME A FIELD REPRESENTATIVE. WERE YOU A FIELD REPRESENTATIVE FOR THE DURATION OF YOUR EMPLOYMENT WITH THE GUARDIAN?

A MY TITLE WOULD HAVE BEEN FIELD REPRESENTATIVE UNTIL THE TIME I RESIGNED, YES.

Q SO YOU WERE NEVER A FULL-TIME AGENT OF THE GUARDIAN?

MR. DOLINKO: HE IS USING THAT IN THE FORMAL SENSE AS I UNDERSTAND IT.

MR. WOLDEN: MY UNDERSTANDING IS THAT IS A TERM OF ART AS FAR AS GUARDIAN EMPLOYMENT IS CONCERNED.

MR. DOLINKO: SO THE QUESTION IS BASICALLY: WERE YOU A FIELD REPRESENTATIVE THAT ENTIRE TIME AS OPPOSED TO BEING AT ALL A FULL-TIME AGENT?

MR. WOLDEN: CORRECT.

THE WITNESS: TO THE BEST OF MY RECOLLECTION, MY TITLE WAS FIELD REPRESENTATIVE.

Q BY MR. WOLDEN: AFTER LEAVING THE EMPLOYMENT WITH THE GUARDIAN SAN LUIS OBISPO GENERAL AGENCY, WHAT WAS YOUR NEXT JOB?

A MY IMMEDIATE JOB FOLLOWING THAT RESIGNATION WAS AS A MANAGER FOR A CHEVRON SERVICE STATION IN ATASCADERO.

Q AND HOW LONG DID YOU DO THAT, MR. HATLEY?

[37] A THAT WAS A SHORT-TERM EMPLOYMENT. I BELIEVE IT LASTED ABOUT THREE OR FOUR MONTHS; ABOUT THREE-AND-A-HALF MONTHS.

Q AND AFTER YOU LEFT YOUR EMPLOYMENT AS A MANAGER OF CHEVRON, WHAT WAS YOUR NEXT JOB AFTER THAT?

A I WAS HIRED AS A CLAIM REPRESENTATIVE FOR STATE FARM FIRE AND CASUALTY COMPANY.

Q AND ARE YOU STILL EMPLOYED BY STATE FARM?

A YES, I AM.

Q AND WHEN YOU ACCEPTED EMPLOYMENT AS A CLAIM REPRESENTATIVE, WHICH OFFICE OF STATE FARM WAS THAT WITH?

A MY PLACE OF EMPLOYMENT WAS SAN LUIS OBISPO.

Q AND HOW LONG DID YOU REMAIN AFFILIATED WITH THE SAN LUIS OBISPO OFFICE OF STATE FARM?

A I WORKED OUT OF THE SAN LUIS OBISPO OFFICE FROM 1991 THROUGH LATE 1993. I BELIEVE IT WAS SEPTEMBER OR OCTOBER OF 1993.

Q AND WHO IS YOUR SUPERVISOR WHILE YOU WERE AFFILIATED WITH THE SAN LUIS OBISPO OFFICE?

A AGAIN, THERE WERE VARIOUS. INITIALLY IT WAS A SUPERINTENDENT LEE COULEHAN. THIS WAS FOLLOWED BY SUPERINTENDENT DAN LOPEZ, L-O-P-E-Z.

Q AND WHEN YOU CEASED YOUR AFFILIATION WITH THE SAN LUIS OBISPO OFFICE, DID YOU BECOME AFFILIATED WITH ANOTHER OFFICE?

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as KOKKONEN INSURANCE AGENCY,

Plaintiffs,

vs. No. 70630

CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, inclusive,

Defendants.

_____/

and related cross action.

_____/

DEPOSITION OF HAVEN B. SANSON

(Part I – Pages 1 to 87)

Date: Tuesday, March 14, 1996

Time: 9:40 a.m.

Location: TAYLOR & COMPANY
1050 Marina Village Parkway, Suite 101
Alameda, California 94501

TRAHAN REPORTING SERVICES

[2] APPEARANCES

For the Plaintiff:

JENCKS, BONITZ & VELLA
By: KIRK J. WOLDEN, ESQ.
The Promontory
412 Higuera Street
San Luis Obispo, California 93401-3867
(805) 544-1890

For the Defendants:

THELEN, MARRIN, JOHNSON & BRIDGES
By: NANCY L. ASBILL, ESQ.
Two Embarcadero Center
San Francisco, California 94111-3995
(415) 984-3091

Reported by: TRAHAN REPORTING SERVICES
By: ROBERT R. CUDA, CSR No. 2652
2560 Ninth Street, Suite 320-A
Berkeley, California 94710
(510) 549-3193

* * *

[42] Q. How long after starting your broker's contract with the Guardian were you associated with the general agency of Hagmaier and d'Autremont?

A The exact dates, I don't recall. 1990 until I departed that area in March of '91.

Q So, approximately close to a year?

A (Nods head).

Q Okay. And for that period – again, we are talking about when you had a broker's contract until the time you departed San Luis Obispo – did you have an office?

A Yes.

Q And where was that office?

A Within Pacific Financial Group.

Q And what was the address?

A Something Higuera.

Q Was it in the Promontory?

A Yes.

Q Other than Mr. D'Autremont, Mr. Hagmaier, and yourself, did any other insurance agents have offices at Pacific Financial Group?

A Other than Hagmaier myself and d'Autremont?

Q Uh-huh.

A Michael Ables and another agent, and for

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., ETC.,	)	
PLAINTIFF,	)	NO. 70630
VS.	)	
CARL J. HAGMAIER, ET AL.,	)	
DEFENDANTS.	)	

DEPOSITION OF DENNIS P. D'AUTREMONT

VOLUME I

SAN LUIS OBISPO
CALIFORNIA

TUESDAY, FEBRUARY 13, 1996

10:05 A.M.

[2] THE DEPOSITION OF DENNIS P. D'AUTREMONT WAS TAKEN IN THE LAW OFFICES OF JENCKS, BONITZ & VELLA, 412 HIGUERA STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CSR, A REGISTERED PROFESSIONAL REPORTER, ON TUESDAY, FEBRUARY 13, 1996, COMMENCING AT THE HOUR OF 10:05 A.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF: JENCKS, BONITZ & VELLA
ATTORNEYS AT LAW
412 HIGUERA STREET
SAN LUIS OBISPO,
CALIFORNIA 93401

BY: MR. MICHAEL JENCKS
- AND -
MR. KIRK J. WOLDEN

FOR THE DEFENDANTS:
THELEN, MARRIN, JOHNSON & BRIDGES
ATTORNEYS AT LAW
TWO EMBARCADERO CENTER
SAN FRANCISCO,
CALIFORNIA 94111-3995

BY: MR. ROBERT A. DOLINKO

ALSO PRESENT: MATT KOKKONEN, CARL HAGMAIER AND KAREN D'AUTREMONT

REPORTED BY: LYNN ODOM, CSR #1905

TRANSCRIBED BY: COLLEEN K. LEA

* * *

[44] A IN DECEMBER OF '89.

Q AS BETWEEN THE TERMINATION IN '89 AND THE FORMATION OF PACIFIC FINANCIAL IN DECEMBER, DO YOU KNOW WHO WAS THE GENERAL AGENT FOR THE GUARDIAN?

A AS FAR AS I KNOW, THERE WAS NONE.

Q AND THE DECEMBER, '89, DATE, THE FORMATION OF PACIFIC FINANCIAL GROUP, COINCIDES, DOES IT NOT, WITH THE GRANT OF THE GENERAL AGENCY BY GUARDIAN LIFE?

A YES.

MR. DOLINKO: CAN YOU READ THE QUESTION BACK? I JUST DIDN'T HEAR IT. I AM SORRY.

(RECORD READ.)

Q BY MR. JENCKS: DID YOU AND MR. HAGMAIER JOINTLY MANAGE PACIFIC FINANCIAL GROUP DURING THE PERIOD YOU BOTH SERVED AS GENERAL AGENTS?

A YES.

Q DID YOU HAVE ANY DIVISION OR DELEGATION OF DUTIES AND RESPONSIBILITIES BETWEEN THE TWO OF YOU, THAT IS, EITHER OF YOU CONCENTRATE ON A DIFFERENT PART OF THE BUSINESS?

A WE PRETTY MUCH DID, GENERALLY SPEAKING, EQUAL DUTIES.

Q ON BUSINESS THAT WAS WRITTEN WHILE YOU WERE A GENERAL AGENT, DO YOU STILL REALIZE ANY INCOME FROM RENEWALS?

* * *

[59] MR. HAGMAIER TO MEAN BY "DOING GREAT"?

A I WAS DOING GREAT.

Q DID HE LIKE YOUR RESPONSES?

MR. DOLINKO: OBJECTION: CALLS FOR SPECULATION.

THE WITNESS: I DIDN'T ASK THAT.

Q BY MR. JENCKS: DID HE HAPPEN TO REFRESH YOUR RECOLLECTION AS TO WHO ANY OF THESE THREE OR FOUR EMPLOYEES WERE THAT YOU COULDN'T REMEMBER THEIR NAMES OF?

A HE DID NOT.

Q WHILE YOU WERE A GENERAL AGENT AT PFG, WAS THERE ANY EXPENSE SHARING OR EXPENSE REIMBURSEMENT AGREEMENT WITH AGENTS?

A NO.

Q WAS MR. ABLES, MIKE ABLES, DID HE EVER HAVE A PARTNERSHIP INTEREST IN PFG?

A NO.

Q WAS HE INVITED TO JOIN THE PARTNERSHIP?

A INVITED BY WHOM?

Q YOU OR MR. HAGMAIER.

A NO.

Q WAS THE PARTNERSHIP A CO-EQUAL ONE, THAT IS, YOU EACH RECEIVED HALF THE INCOME AND EACH PUT UP HALF THE CAPITAL?

A EVERYTHING WAS 50/50.

Q WAS ANY PART OF THE INITIAL CAPITAL OF PFG

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., PLAINTIFF, VS. CARL J. HAGMAIER, ET AL., DEFENDANTS.	NO. 70630

VOLUME III
DEPOSITION OF DENNIS P. D'AUTREMONT

SAN LUIS OBISPO, CALIFORNIA
THURSDAY, FEBRUARY 15, 1996
10:02 A.M.

[377] THE DEPOSITION OF DENNIS P. D'AUTREMONT, TAKEN AT 412 HIGUERA ST., SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CSR, A REGISTERED PROFESSIONAL REPORTER, ON THURSDAY, FEBRUARY 15, 1996, COMMENCING AT THE HOUR OF 10:02 A.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:
JENCKS, BONITZ & VELLA
ATTORNEYS AT LAW
412 HIGUERA ST.
SAN LUIS OBISPO, CA 93401

BY: MR. MICHAEL JENCKS

FOR THE DEFENDANTS:
THELEN, MARRIN, JOHNSON
& BRIDGES
ATTORNEYS AT LAW
TWO EMBARCADERO CENTER
SAN FRANCISCO, CA 94111-3995

BY: MR. ROBERT A DOLINKO

ALSO PRESENT:
MATT KOKKONEN
CARL HAGMAIER
KAREN D'AUTREMONT

REPORTED BY:
LYNN ODOM
CSR #1905

TRANSCRIBED BY:
JEAN TRUMBULL

* * *

[383] CALL THE ASSIGNED SERVICING AGENT TO THEIR POLICY OR POLICIES WITH THE GUARDIAN LIFE INSURANCE COMPANY.

Q DID YOU TELL THEM TO CONVEY ANY INFORMATION ABOUT MR. KOKKONEN'S STATUS TO THOSE CLIENTS?

A I DON'T RECALL THAT WE TOLD THEM THAT OR NOT.

Q ONE OTHER THING UP FROM YESTERDAY. I AM CONFUSED. DID MR. ABLES OR DID THE PFG EVER HOLD OUT MR. ABLES AS BEING A PRINCIPAL OR PARTNER OF PFG?

MR. DOLINKO: I AM GOING TO OBJECT TO THE EXTENT IT IS VAGUE AND AMBIGUOUS. I WILL LET HIM ANSWER.

THE WITNESS: OKAY. CAN I ASK YOU TO REPEAT THAT QUESTION? DID WHO HOLD OUT?

Q BY MR. JENCKS: DID PFG –

A OKAY.

Q – EVER HOLD MR. ABLES OUT, MICHAEL ABLES, AS BEING A PARTNER OR PRINCIPAL OF PFG?

A INITIALLY, WE HAD, THE THREE OF US, MR. HAGMAIER, MR. ABLES, AND MYSELF, HAD TALKED ABOUT BEING EQUAL PARTNERS IN PFG.

Q AND WHEN ABOUT WAS THAT WHEN YOU SAY "INITIALLY"?

A THAT WOULD HAVE BEEN IN NOVEMBER OF 1989.

Q AND WHAT CAME OF THESE DISCUSSIONS?

A THE FINAL DECISION AND OUTCOME AS OF DECEMBER 1ST OF 1989 WAS THAT MR. ABLES WOULD NOT BE A [384] PARTNER IN THE AGENCY. IT WAS THE D'AUTREMONT-HAGMAIER AGENCY, DOING BUSINESS AS PFG.

Q WAS THAT DECISION CONCURRED TO BY MR. ABLES?

A WAS IT CONCURRED?

Q DID HE AGREE WITH THAT DECISION?

A HE ACCEPTED THAT DECISION.

Q BY WHOM WAS THAT DECISION MADE?

A IT WAS MADE BETWEEN MR. HAGMAIER AND MYSELF AND GUARDIAN HOME OFFICE

Q DID MR. ABLES WANT TO BE A PARTNER AND PRINCIPAL OF PACIFIC FINANCIAL GROUP?

A INITIALLY, HE DID.

Q WAS THE DECISION BY YOURSELF AND MR. HAGMAIER AND THE GUARDIAN HOME OFFICE COMMUNICATED TO MR. ABLES AT THAT TIME?

A YES, IT WAS.

Q DO YOU KNOW IF WHEN YOU FILED THE ORIGINAL FICTITIOUS BUSINESS STATEMENT OF MR. ABLES WAS IDENTIFIED AS ONE OF THE PARTNERS OF PFG?

A I DON'T BELIEVE HE WAS, BUT I REALLY DON'T RECALL.

Q IF I ASKED YOU THIS, I APOLOGIZE, BUT DO YOU KNOW IF YOU CAUSED THE NOTICE OF YOUR WITHDRAWAL FROM PACIFIC FINANCIAL GROUP TO BE PUBLISHED IN THE NEWSPAPER?

A DID I PERSONALLY?

* * *

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants.	**Case No. 70630** **DEFENDANTS' THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, THE GUARDIAN INVESTOR SERVICES CORPORATION AND DENNIS P. D'AUTREMONT'S SEPARATE STATEMENT IN REPLY** **Date: August 23, 1996** **Time: 9:00 a.m.** **Place: CLM**
AND RELATED CROSS-ACTION.	

CONFIDENTIAL - FILED UNDER SEAL

(Filed Aug 16, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants. AND RELATED CROSS-ACTION.	**Case No. 70630** **DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION** **Date: August 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 16, 1996)

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ROBERT A. DOLINKO (SBN 76256)
MARTA R. PIERPOINT (SBN 135639)
ROBERT SPAGAT (SBN 157388)
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN (SBN 126961)
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants. AND RELATED CROSS-ACTION.	**Case No. 70630** **DECLARATION OF ROBERT SPAGAT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION** **Date: August 23, 1996** **Time: 9:00 a.m.** **Dept.: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 16, 1996)

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ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants.	**Case No. 70630** **DEFENDANTS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION**
AND RELATED CROSS-ACTION.	**Date: August 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 16, 1996)

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MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants. AND RELATED CROSS-ACTION.	**Case No. 70630** **DEFENDANTS' THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, THE GUARDIAN INVESTOR SERVICES CORPORATION AND DENNIS P. D'AUTREMONT'S OBJECTIONS TO EVIDENCE OFFERED IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION** **Date: August 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL
(Filed Aug. 20, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation

and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telepohone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, GUARDIAN INSURANCE AND ANNUITY CORPORATION, AND GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al. Defendants. AND RELATED CROSS-ACTION.	**Case No. 70630** **DEFENDANTS HATLEY, SANSON AND ABLES' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** **Date: August 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed July 26, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. and related cross action.	**Case No. 70630** **DEFENDANTS HATLEY, SANSON AND ABLES' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** **Date: Aug. 23, 1996** **Time: 9:00 a.m.** **place: CLM**

TO PLAINTIFF MATT K. KOKKONEN AND HIS ATTORNEYS OF RECORD:

Please take notice that Defendants Martin Hatley, Haven Sanson and Michael Ables will, and hereby do, move for summary judgment. The hearing on this motion has been set for August 23, 1996 at 9:00 a.m. or as soon thereafter as counsel can be heard in the Civil Law & Motion Department, Rm. 355, Government Center, San Luis Obispo, California, 93408. The motion is made pursuant to Section 437c of the California Code of Civil Procedure on the grounds that there is no triable issue of material fact and these defendants are entitled to judgment on a matter of law.

These defendants are entitled to summary judgment on the grounds that the undisputed material facts demonstrate: (1) they were not part of any conspiracy; (2) they cannot have conspired with their employers and co-employees; (3) defendant Ables did not engage in any wrongful act; (4) the contents of the letters written by defendants Sanson and Hatley are true; (5) the letters written by defendants Sanson and Hatley are not actionable under the applicable statute of limitations; and (6) plaintiff's trade libel claim is based on acts which occurred after Sanson and Hatley left Guardian and Pacific Financial Group. Moreover, these defendants hereby fully join in the motion for summary judgment filed simultaneously by defendants Dennis d'Autremont, The Guardian Life Insurance Company of America, Guardian Insurance and Annuity Corporation and Guardian Investor Services Corporation.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Appendix of Non-California Authority Cited in Defendants' Motion filed and served herewith, the Declarations of Michael Ables, Tim Lavey and Robert Dolinko and Exhibits thereto, the Separate Statement of Undisputed Facts, the Request for Judicial Notice, on all pleadings

and records on file in this action, and on such other evidence as the court may wish to consider at the hearing

Dated: July 25, 1996

THELEN, MARRIN, JOHNSON & BRIDGES

By /s/ Robert Spagat
Robert A. Dolinko
Marta R. Pierpoint
Robert Spagat
Attorneys for Defendants

DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, GUARDIAN INSURANCE AND ANNUITY CORPORATION, and GUARDIAN INVESTOR SERVICES CORPORATION

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY,

Plaintiff,

vs.

CARL J. HAGMAIER, et al.,

Defendants.

and related cross action.

Case No. 70630

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MICHAEL ABLES, HAVEN SANSON, AND MARTIN G. HATLEY'S MOTIONS FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Date: Aug. 23, 1996
Time: 9:00 a.m.
Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Jul. 26, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY,

Plaintiff,

vs.

CARL J. HAGMAIER, et al.,

Defendants.

Case No. 70630

SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS MICHAEL ABLES, HAVEN B. SANSON AND MARTIN G. HATLEY'S MOTION FOR SUMMARY JUDGMENT

Date: Aug. 23, 1995
Time: 9:00 a.m.
Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Jul. 26, 1996)

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Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY,

Plaintiff,

vs.

CARL J. HAGMAIER, et al.,

Defendants.

and related cross action.

Case No. 70630

DECLARATION OF MICHAEL ABLES IN SUPPORT OF DEFENDANTS' MICHAEL ABLES, HAVEN SANSON, AND MARTIN G. HATLEY'S MOTIONS FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Hearing
Date: Aug. 23, 1996
Time: 9:00 a.m.
Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Jul. 26, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. and related cross action.	**Case No. 70630** **DEFENDANTS' MICHAEL ABLES, HAVEN B. SANSON AND MARTIN G. HATLEY'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION** **Date: Aug. 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 16, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY, Plaintiff, vs. CARL J. HAGMAIER, et al., Defendants. and related cross action.	**Case No. 70630** **DEFENDANT MARTIN G. HATLEY, HAVEN B. SANSON, AND MICHAEL ABLES' REPLY PLAINTIFF'S SEPARATE STATEMENT** **Date: Aug. 23, 1996** **Time: 9:00 a.m.** **Place: CLM**

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 16, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

ROBERT A. DOLINKO, State Bar No. 76256
MARTA R. PIERPOINT, State Bar No. 135639
ROBERT SPAGAT, State Bar No. 157388
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center, Suite 2200
San Francisco, California 94111
Telephone: (415) 392-6320

ROY E. OGDEN, State Bar No. 126961
SINSHEIMER, SHIEBELHUT & BAGGETT
A Professional Corporation
Post Office Box 31
San Luis Obispo, California 93406
Telephone: (805) 541-2800

Attorneys for Defendants
DENNIS P. D'AUTREMONT, HAVEN B. SANSON, MARTIN G. HATLEY, MICHAEL ABLES, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, THE GUARDIAN INSURANCE AND ANNUITY CORPORATION, and THE GUARDIAN INVESTOR SERVICES CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY,

Plaintiff,

vs.

CARL J. HAGMAIER, et al.,

Defendants.

AND RELATED CROSS ACTION.

Case No. 70630

DEFENDANTS HAVEN B. SANSON, MARTIN G. HATLEY AND MICHAEL ABLES' OBJECTIONS TO EVIDENCE SUBMITTED BY PLAINTIFF IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, AND IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Date: Aug. 23, 1996
Time: 9:00 a.m.
Place: CLM

CONFIDENTIAL – FILED UNDER SEAL

(Filed Aug. 20, 1996)

This document (and any exhibits or attachments thereto) are filed under seal pursuant to the Stipulation and Protective Order entered by this Court on January 14, 1994.

JENCKS BONITZ & VELLA
Michael R. Jencks SBN 053822
Kirk J. Wolden SBN 138902
The Promontory
412 Higuera Street
San Luis Obispo, CA 93401-3867
Telephone (805) 544-1890
Facsimile (805) 544-1984

Counsel for Plaintiff
MATT T. KOKKONEN, dba
KOKKONEN INSURANCE AGENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as THE MATT KOKKONEN INSURANCE AGENCY,

Plaintiff,

vs.

CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, inclusive,

Defendants.

and related cross action.

Case No. 70630

NOTICE OF MOTION AND MOTION OF PLAINTIFF MATT T. KOKKONEN FOR PROTECTIVE ORDER AND FOR SANCTIONS

DATE: APRIL 2, 1996
TIME: 9:30 a.m.
DEPT: CLM

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 1996, at 9:00 a.m., in the Civil Law and Motion department of the above-entitled Court, located at 1050 Monterey Street, San Luis Obispo, California, plaintiff Matt T. Kokkonen will and does hereby move this Court for a protective order limiting the disclosure of his trade secrets, including information relating to plaintiff's clientele since October 31, 1989.

This motion is brought pursuant to Section 2025(i) of the California Code of Civil Procedure and is made on the grounds that: (1) defendants seek to expose plaintiff Kokkonen's trade secrets; (2) defendants have steadfastly refused, without good cause, to stipulate to the designation of Kokkonen's trade secrets as "Attorney's Eyes Only" under the Court's January 14, 1994 Stipulation and Order, and 3) disclosure of Kokkonen's trade secrets will work a definite and serious injury against Kokkonen. In addition, Kokkonen seeks sanctions regarding defendants' unreasonable refusal to stipulate to the designation of the trade secrets which are subject of this motion as "Attorney's Eyes Only."

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declarations of Kirk J. Wolden and Matt T. Kokkonen, filed and served contemporaneously herewith, and any other oral or documentary evidence which may be produced at or before the hearing of this Motion.

DATED: March 6th, 1996

JENCKS BONITZ & VELLA

By: /s/ Kirk J. Wolden
Counsel for Plaintiff
MATT T. KOKKONEN and
KOKKONEN INSURANCE
AGENCY

PROOF OF SERVICE BY HAND DELIVERY

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)

I, the undersigned, declare that I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 years and not a party to the within action; my business address is The Promontory, 412 Higuera Street, San Luis Obispo, California 93401-3867.

On March 6, 1996, I served in the manner indicated below, the foregoing documents described as:

NOTICE OF MOTION AND MOTION OF PLAINTIFF MATT T. KOKKONEN FOR PROTECTIVE ORDER AND FOR SANCTIONS

on interested parties in this action by placing a true copy thereof in a sealed envelope and personally delivered addressed as follows:

Robert K. Shiebelhut, Esq.
Sinsheimer, Schiebelhut, & Baggett
1010 Peach Street
San Luis Obispo, CA 93401

Co-Counsel for Defendants

Hagmaier, D'Autremont, Hatley, Ables, Sanson, Guardian Life Ins., Guardian Ins. & Annuity, Pacific Financial Group, and Guardian Investor Services

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 6, 1996, at San Luis Obispo, California.

/s/ Deborah Takamura
Deborah Takamura

JENCKS BONITZ & VELLA
Michael R. Jencks SBN 053822
Kirk J. Wolden SBN 138902
The Promontory
412 Higuera Street
San Luis Obispo, CA 93401-3867
Telephone (805) 544-1890
Facsimile (805) 544-1984

Counsel for Plaintiff
MATT T. KOKKONEN, dba
KOKKONEN INSURANCE AGENCY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., individually and doing business as KOKKONEN INSURANCE AGENCY, Plaintiff, v. CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY	CASE NO. 70630 DECLARATION OF KIRK J. WOLDEN IN SUPPORT OF PLAINTIFF MATT T. KOKKONEN'S MOTION FOR PROTECTIVE ORDER DATE: April 2, 1996 TIME: 8:00 a.m. DEFT: Room 355

CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, inclusive,

Defendants.

and related cross action.

I, Kirk J. Wolden, declare:

1. I am an attorney duly licensed to practice before all courts in the State of California. I am an associate with JENCKS BONITZ & VELLA, counsel for plaintiff in the above-captioned action. I am personally familiar with the following facts, and if called as a witness in this matter could and would competently testify thereto.

2. Attached hereto as Exhibit "A" to this declaration and incorporated by this herein reference is a copy of the Confidentiality Stipulation and Order entered by this Court on January 14, 1994.

3. Attached hereto as Exhibit "B" to this declaration and incorporated by this reference is a copy of the Notice of Deposition of Matt T. Kokkonen.

4. On February 29, 1996, the deposition of Matt T. Kokkonen commenced. The afternoon of the first day of Mr. Kokkonen's deposition, counsel for defendants, Mr. Robert Dolinko, began a line of questioning with respect to one of Mr. Matt Kokkonen's clients designed to elicit from Mr. Kokkonen information regarding policyholders and insurance policies provided to clients which Mr. Kokkonen had written or provided to them for clients since October 31, 1989.

5. I objected to the question or questions and sought to designate this line of questioning Confidential "Attorney's Eyes Only."

6. Mr. Dolinko challenged my effort to classify this line of questioning as "Attorney's Eyes Only." The deposition was temporarily adjourned in order to obtain a copy of the Confidentiality Stipulation and Order entered by the Court on January 14, 1994.

7. After my review of paragraph 4 of the Confidentiality Stipulation and Order, I came to the conclusion that the information could be designated as "Attorney's Eyes Only" by way of stipulation between the parties or, in the alternative, by way of court motion for protective order.

8. I advised Mr. Dolinko of my position that the information regarding insurance services provided to Mr. Kokkonen's clients since October 31, 1989 was information which was covered by the Confidentiality Stipulation and Order. I asked Mr. Dolinko to stipulate to the designation of information relating to insurance services provided by Mr. Kokkonen to his clients since October 31, 1989 as "Attorney's Eyes Only" and to remove the defendants then present from the room. Mr. Dolinko refused both requests.

9. I instructed Mr. Kokkonen not to answer the question or questions which has [sic] been posed and advised Mr. Dolinko, that based upon his refused [sic] to stipulate to the designation of the testimony in question as "Attorney's Eyes Only." Kokkonen would be seeking, pursuant to the paragraph 4 of the Confidentiality Stipulation and Order, a protective order providing for the

designation of information regarding services provided by Kokkonen to his clients between October 31, 1989, including information specifically relating to policies written or investments sold by Kokkonen since October 31, 1989 as "Attorney's Eyes Only."

10. On the first day of the deposition, I had refused to allow Mr. Kokkonen to answer any questions which related in any way to communications between he and his clients between October 31, 1989 and the present. This included, but was not limited to, details of insurance and investment services, and personal financial and private information necessary for Mr. Kokkonen to service his clients obtained between October 31, 1989 and the present. At or near the termination of the second day of the deposition, I advised Mr. Dolinko that I would be reviewing my position regarding the need to designate all client communications as "Attorney's Eyes Only." I advised Mr. Dolinko that I would apprise him of my final position on Tuesday morning when the deposition reconvened. At that stage, I had yet to fully consider and reach a conclusion regarding the extent of Kokkonen's legal and ethical obligations regarding the disclosure of general information provided to him by clients. On Tuesday, March 5, 1996, I advised Mr. Dolinko that I would withdraw my instruction not to answer questions to the extent that Mr. Dolinko sought general information regarding communications between Kokkonen and his clients from October 31, 1989 to the present. I advised Mr. Kokkonen of my intention to designate such testimony as confidential in accordance with paragraph 2 of the Confidentiality Stipulation and Order.

11. I further advised Mr. Dolinko that with respect to information regarding details of insurance and investment services provided to Kokkonen's clients since October 31, 1989, and private financial and personal information provided to Kokkonen by his clients in order to aid and allow Mr. Kokkonen to provide his clients with such services, that such information would have to be designated by stipulation of the parties as "Attorney's Eyes Only" or that I would be forced to seek a protective order. Mr. Dolinko continued his refusal to stipulate or to the removal of the defendants then present in the room. In turn, I advised Mr. Dolinko of my intention to continue to instruct Mr. Kokkonen not to answer questions relating to this information and of Kokkonen's intention to seek a protective order in accordance with paragraph 4 of the Confidentiality and Stipulation Order.

12. On various occasions throughout the first four days of Mr. Kokkonen's deposition, Mr. Dolinko asked questions of Mr. Kokkonen which in my opinion required the disclosure of information relating to details of insurance and investment services provided by the deponent to his clients since October 31, 1989. On each occasion, I objected to the question posed and instructed Mr. Kokkonen not to answer the question. I consistently advised Mr. Dolinko that I would withdraw my instruction not to answer if he were willing to stipulate to the designation of the information as "Attorney's Eyes Only" and remove the defendants then present from the deposition room. On each such occasion, Mr. Dolinko refused my offer. I continued to regularly make this offer to Mr. Dolinko

when questions were asked requested details and information relating to insurance and investment services provided by Mr. Kokkonen to his clients since October 31, 1989. I ceased making such offers during the third day of the deposition at the specific request of Mr. Dolinko.

13. Defendants have already taken advantage of the ability to designate information "Attorney's Eyes Only." Despite serious reservations about the proprietary nature of a seven year old business plan for Pacific Financial Group which was produced at the deposition of Dennis d'Autremont, counsel for Kokkonen allowed defendants to designate such plan as "Attorney's Eyes Only." Counsel did so in order to allow for the completion of the deposition and with full knowledge that it could seek to challenge that designation in the event Kokkonen's counsel concluded that it was necessary to disclose information in the business plan to Kokkonen.

14. In preparing this motion and the declarations in support thereof, I have expended at least four hours of my time. In addition, I anticipate that I will require an additional two hours to prepare a reply and to appear at the hearing of this matter. My normal billing rate is $150.00 which I am informed and believe is both reasonable and customary for an attorney of my experience.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 12th day of March, 1996 at San Luis Obispo, California.

/s/ Kirk J. Wolden
Kirk J. Wolden

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., ETC.,	)	
PLAINTIFF,	)	
VS.	)	NO. 70630
CARL J. HAGMAIER, ET AL.,	)	
DEFENDANTS.	)	
AND RELATED CROSS-ACTION	)	

DEPOSITION OF CARLTON J. HAGMAIER
VOLUME I

SAN LUIS OBISPO
CALIFORNIA

MONDAY, JULY 15, 1996
1:07 P.M.

[2] THE DEPOSITION OF CARLTON J. HAGMAIER WAS HELD IN THE LAW OFFICES OF JENCKS, BONITZ & VELLA, 412 HIGUERA STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF CALIFORNIA, ON MONDAY, JULY 15, 1996, COMMENCING AT THE HOUR OF 1:07 P.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:	JENCKS, BONITZ & VELLA ATTORNEYS AT LAW 412 HIGUERA STREET SAN LUIS OBISPO, CALIFORNIA 93401 BY: MR. GREGORY J. ANTONIONO
FOR THE DEFENDANTS D'AUTREMONT, ABLES, HATLEY, SANSON AND THE GUARDIAN ENTITIES:	THELEN, MARRIN, JOHNSON & BRIDGES ATTORNEYS AT LAW TWO EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111 BY: MR. ROBERT A. DOLINKO
FOR THE DEFENDANT CARLTON HAGMAIER AND PACIFIC FINANCIAL GROUP:	HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY ATTORNEYS AT LAW 333 MARKET STREET, 23RD FLOOR SAN FRANCISCO, CALIFORNIA 94105 BY: MR. JAMES A. NAPOLI
ALSO PRESENT:	MATT KOKKONEN, DENNIS D'AUTREMONT, KAREN D'AUTREMONT AND MICHAEL ABLES

REPORTED BY: LYNN ODOM
CSR NO. 1905

TRANSCRIBED BY: COLLEEN K. LEA

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., ETC.,	)	
PLAINTIFF,	)	NO. 70630
VS.	)	
CARL J. HAGMAIER, ET AL.,	)	
DEFENDANTS.	)	

DEPOSITION OF DENNIS P. D'AUTREMONT
VOLUME I

SAN LUIS OBISPO
CALIFORNIA

TUESDAY, FEBRUARY 13, 1996
10:05 A.M.

REPORTED BY:
LYNN ODOM
CSR #1905

[2] THE DEPOSITION OF DENNIS P. D'AUTREMONT

WAS TAKEN IN THE LAW OFFICES OF JENCKS, BONITZ & VELLA, 412 HIGUERA STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CSR, A REGISTERED PROFESSIONAL REPORTER, ON TUESDAY, FEBRUARY 13, 1996, COMMENCING AT THE HOUR OF 10:05 A.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF: JENCKS, BONITZ & VELLA
ATTORNEYS AT LAW
412 HIGUERA STREET
SAN LUIS OBISPO,
CALIFORNIA 93401

BY: MR. MICHAEL JENCKS
- AND -
MR. KIRK J. WOLDEN

FOR THE DEFENDANTS: THELEN, MARRIN, JOHNSON & BRIDGES

ATTORNEYS AT LAW
TWO EMBARCADERO CENTER
SAN FRANCISCO,
CALIFORNIA 94111

BY: MR. ROBERT A. DOLINKO

ALSO PRESENT: MATT KOKKONEN, CARL HAGMAIER AND KAREN D'AUTREMONT

REPORTED BY: LYNN ODOM,
CSR #1905

TRANSCRIBED BY: COLLEEN K. LEA

* * *

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U.
Plaintiff,
vs.
CARL J. HAGMAIER, ET AL.,
Defendants.

No. 70630

Fresno, California September 24, 1996

DEPOSITION OF HAROLD K. MOSHER

---

[4] APPEARANCES OF COUNSEL:

For the Plaintiff:

JENCKS LAW GROUP
By: Kirk J. Wolden
The Promontory
412 Higuera Street
San Luis Obispo, California 93401-3867

For the Defendants, Carl Hagmaier and Pacific Financial Group:

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY
By: James A. Napoli
333 Market Street, 23rd Floor
San Francisco, California 94105-2173

For the Defendants, Dennis P. d'Autremont; Michael Ables; Haven B. Sanson; Martin G. Hatley; The Guardian Life Insurance Company of America; The Guardian Investment and Annuity Corporation; The Guardian Investor Services Corporation:

THELEN, MARRIN, JOHNSON & BRIDGES
By: Robert Spagat
Two Embarcadero Center
San Francisco, California 94111-3995

For Harold K. Mosher:

CASWELL, BELL, HILLISON, BURNSIDE
& GREER
By: G. Thomas Caswell, Jr.
5200 North Palm Avenue, Suite 211
Fresno, California 93704-2228

Also Present: Matt T. Kokkonen

EXAMINATION BY MR. SPAGAT

Q Good morning, Mr. Mosher. My name is Bob Spagat. I'm an attorney in a lawsuit that was filed by Mr. Matt Kokkonen who, as you know, is sitting here at the table today. I represent The Guardian Life Insurance Company of America, The

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., Individually and doing business as KOKKONEN INSURANCE AGENCY,

Plaintiffs,

NO. 70630

vs.

CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. HATLEY; MICHAEL ABLES, PACIFIC FINANCIAL GROUP, THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, Inclusive,

Defendants.

_____/

and related cross action.

_____/

DEPOSITION OF DEHAVEN B. SANSON

(Part I – Pages 1 to 87)

Date: Tuesday, March 14, 1996

Time: 9:40 a.m.

Location: TAYLOR & COMPANY
1050 Marina Village Parkway, Suite 101
Alameda, California 94501

TRAHAN REPORTING SERVICES

APPEARANCES

For the Plaintiff:

JENCKS, BONITZ & VELLA
By: KIRK J. WOLDEN, ESQ
The Promontory
412 Higuera Street
San Luis Obispo, California 93401-3867
(805) 544-1890

For the Defendants:

THELEN, MARRIN, JOHNSON & BRIDGES
By: NANCY L. ASBILL, ESQ
Two Embarcadero Center
San Francisco, California 94111-3885
(415) 984-3091

Reported by:

TRAHAM REPORTING SERVICES
By: ROBERT R. CUDA, CSR NO. 2652
2560 Ninth Street, Suite 320-A
Berkeley, California 94710
(510) 548-3193

TRAHAM REPORTING SERVICES

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EXHIBITS

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(See CONFIDENTIAL Section of transcript bound separately for Plaintiff's Exhibits C to N)

TRAHAN REPORTING SERVICES

DEHAVEN B. SANSON

Sworn as a witness by the Certified Shorthand Reporter, testified as follows

EXAMINATION BY MR. WOLDEN

(Plaintiff's Exhibit A marked for identification)

MR. WOLDEN Q. Good morning would you state your full name for the record and spell your Last name, please?

A. Dehaven Briant Sanson. S-A-N-S-O-N

Q. Mr. Sanson, I have already introduced myself. But just so the record reflects, my name is Kirk Wolden. I am an associate with the firm of Jencks, Bonitz & Vella in San Luis Obispo, and we are counsel for Mr. Kokkonen and the action that has been filed against you and several other individual and coporate defendants

Have you ever had your deposition taken before, Mr. Sanson?

A. No.

Q. Well, just quickly, I will review some of the rules I try to abide by just to maybe make things a little easier, a little simpler, and we might get out of here a little earlier and enjoy some of this lovely afternoon.

* * *

JENCKS BONITZ & VELLA
Michael R. Jencks SBN 053822
Kirk J. Wolden SBN 138902
Gregory J. Antoniono SBN 163190
The Promontory, 412 Higuera Street
San Luis Obispo, CA 93401-3867
Telephone (805) 544-1890
Facsimile (805) 544-1984

Counsel for Plaintiff
MATT T. KOKKONEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., Individually and doing business as KOKKONEN INSURANCE AGENCY, Plaintiff, v. CARL J. HAGMAIER; DENNIS P. D'AUTREMONT; HAVEN B. SANSON; MARTIN G. MATLEY; MICHAEL ABLES; PACIFIC FINANCIAL GROUP; THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA; THE GUARDIAN INSURANCE AND ANNUITY CORPORATION; THE GUARDIAN INVESTOR SERVICES CORPORATION; and DOES 1 through 25, Inclusive, Defendants.	CASE NO. CV 70630 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES DATE: August 23, 1996 TIME: 9:00 a.m. DEPT: CLM (Filed Aug. 9, 1996)

* * *

is founded upon post- and extra-termination conduct, well outside the scope of *Breach of Contract Action.*

B. DEFENDANTS' RELIANCE ON THE "CLEAR AND CONVINCING" STANDARD TO OPPOSE SUMMARY JUDGMENT IS ERRONEOUS AS KOKKONEN IS NOT A PUBLIC FIGURE.

1. Summary Judgment Standard.

"A defendant who moves for summary judgment must conclusively negate a necessary element of the plaintiff's case, and demonstrate that under no hypothesis is there a material effect that requires the process of a trial." *Live Oak Publishing, Co. v. Cohagan* (1991) 234 Cal.App.3d 1277 at 1487 citing *Molka v. Holy Spirit Assn.* (1988) 46 Cal.3d 1093, 1107, "A granting of a summary judgment is a drastic remedy, and if there is any issue of material fact to be tried, a summary judgment must be denied." *Woodland Hills Homeowners Org. v. Los Angeles Community College Dist.* (1992) 18 Cal.App.3d 79. As to each of the eight causes of action at issue, material facts exist[7]. Further, discovery is not "complete" nor is it virtually *complete* as defendants allege. Multiple depositions

---

[7] Plaintiff also asserts that the confidential nature of the documents proffered by Defendants in support of this motion prohibit him from confronting his accusers, as such he is denied his Constitutional right under State and Federal law and hereby objects to this Motion.

and written discovery are both still outstanding [Declaration of KJW at]. This presents another rationale for denying this Motion.

2. Plaintiff is not a "Public Figure": the "Clear and Convincing" Standard Does Not Therefore Apply.

Defendants mistakenly posit that the Plaintiff must show the existence of a triable issue of material fact in this case by producing "clear and convincing evidence," their justification is because this case has defamation issues. While the "clear and convincing evidence" standard is applied to select types of defamation actions, this action does not fall within that select group. Well & Brown, Civil Procedure Before Trial, Summary Judgment § 10:282, states that the application of the "clear and convincing" standard is clearly reserved for "public figure" plaintiffs:

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

MATT T. KOKKONEN, C.L.U., ETC., PLAINTIFF, VS. CARL J. HAGMAIER, ET AL., DEFENDANTS.	NO. 70630
AND RELATED CROSS-ACTION	

VOLUME I

DEPOSITION OF MICHAEL ABLES

SAN LUIS OBISPO
CALIFORNIA

MONDAY, MARCH 18, 1996
9:35 A.M.

REPORTED BY:
LYNN ODOM
CSR #1905

[2] THE DEPOSITION OF MICHAEL ABLES

WAS TAKEN IN THE LAW OFFICES OF JENCKS, BONITZ & VELLA, 412 HIGUERA STREET, SAN LUIS OBISPO, CALIFORNIA, BEFORE LYNN ODOM, CSR, A

REGISTERED PROFESSIONAL REPORTER, ON MONDAY, MARCH 18, 1996, COMMENCING AT THE HOUR OF 9:35 A.M.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:	JENCKS, BONITZ & VELLA ATTORNEYS AT LAW 412 HIGUERA STREET SAN LUIS OBISPO, CALIFORNIA 93401 BY: MR. KIRK J. WOLDEN
FOR THE DEFENDANTS:	THELEN, MARRIN, JOHNSON & BRIDGES ATTORNEYS AT LAW TWO EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111 BY: MR. ROBERT A. DOLINKO
ALSO PRESENT:	MATT KOKKONEN AND DENNIS D'AUTREMONT
REPORTED BY:	LYNN ODOM, CSR #1905
TRANSCRIBED BY:	COLLEEN K. LEA

* * *